

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff American Civil Liberties Union Immigrants' Rights Project ("Plaintiff" or "ACLU"), brings this action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and seeks disclosure of records held by the United States Immigration and Customs Enforcement agency ("ICE"), a branch of the Department of Homeland Security ("DHS"). Plaintiff seeks to enforce the public's right to information regarding Defendant's immigration removals, detentions, and apprehensions. *See* Request Under Freedom of Information Act (Expedited Processing & Fee Waiver/Limitation Requested) (the "FOIA Request"), a true and correct copy of the FOIA Request is annexed hereto as Exhibit A.

2. The information sought is of significant value to the public. Plaintiff seeks information about removals, detentions, apprehensions, risk classification assessments, and bond management information system data. *Id.* This data will help Plaintiff monitor the Trump administration's unprecedented use of immigration detention and its sweeping changes to immigration enforcement in communities inside the U.S.

3. ICE's failure to respond to Plaintiff's FOIA Request and turn over requested records violates the FOIA and impedes Plaintiff's efforts to educate the public regarding how ICE enforces federal immigration laws and to determine whether ICE's current practices comply with applicable laws, regulations, and constitutional requirements. Currently, there is no comparable source of information or analysis of enforcement and immigration detainee data available to the public. The requested information would increase the public's understanding about how ICE is targeting immigrants for detention and removal; how it is treating immigration detainees; and how the public's tax dollars are being spent with respect to such immigration matters. Thus, the requested information will significantly contribute to the public's understanding of government operations and activities.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331, and 28 U.S.C. § 1346.

5. Venue in this district is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391 because Plaintiff has its principal place of business in New York, New York.

THE PARTIES

6. Plaintiff ACLU is a non-partisan non-profit that works to defend and preserve individual rights and liberties guaranteed to all people in the United States by the Constitution. The ACLU Immigrants' Rights Project is a project of the ACLU that focuses on defending immigrants' rights in the United States and informing the public about immigration enforcement practices of the U.S. federal government.

THE FOIA REQUEST

7. On October 3, 2018, Plaintiff submitted the FOIA Request, seeking five categories of “spreadsheet data along with any explanatory notes needed to make the data intelligible” on: (1) “removals that occurred between 2003 and the date of this request or any later date;” (2) “all detentions with book-in dates from 2003 to the date of this request or any later date;” (3) “data tracking ICE arrests/apprehensions;” (4) “ICE risk classification assessments;” and (5) “data tracking transactions related to immigration bonds, including their setting, payment, cancellation and breach.”

8. The FOIA Request in large part seeks records that Defendants have previously disclosed under the FOIA. First, the FOIA Request seeks an updated version of the removal data already provided to the New York Times in response to request 14-03290, which detailed removals that occurred between 2003 and 2013. (*Id.* at 1-2.) The information would include all “removals that occurred between 2003 and the date of this request or any later date.” *Id.* The FOIA Request included a list of thirty-six (36) fields related to removal data that, upon information and belief, were included in Defendant’s response to the New York Times’ request and asked that Defendant produce the same fields or, if the fields had since changed, equivalent current fields. (*Id.* at 2.) On information and belief, these items remain in ICE databases and have previously been released to the public.

9. Second, the FOIA Request seeks a longer-term set of updated detention data than the data released to the Human Rights Watch as part of request 15-06191. (*Id.* at 3.) The information would include “all detentions with book-in dates from 2003 to the date of this request or any later date.” (*Id.*) The FOIA Request included a list of thirty (30) fields related to detention data that were included in Defendant’s response to the Human Rights Watch’s

request and asked that Defendant produce the same fields or, if the fields had since changed, equivalent current fields. (*Id.* at 3-4.) On information and belief, these items remain in ICE databases and have previously been released to the public.

10. Third, the FOIA Request seeks apprehension data about ICE arrests and apprehensions. (*Id.* at 4.) Specifically, Plaintiff requested that Defendant release five (5) fields of apprehension data, including: (1) unique identifiers; (2) dates of arrest; (3) types of arrests; (4) identifier data for each arresting officer; and (5) resolution of arrests (e.g., release, detention, release on alternative to detention). (*Id.*) On information and belief, ICE maintains this data and has released it to third parties in the past.

11. Fourth, the FOIA Request seeks “data tracking ICE risk classification assessments . . . [including] all electronic database information concerning individuals’ Risk Classification Assessments (“RCAs”) conducted by ICE during the relevant time period.” (*Id.*) The request for RCA data includes: “all database information concerning the results of the RCA, including the date on which it was conducted, its status and result, any determinations concerning danger, flight risk, or other relevant factors, any information concerning the recommendation of the RCA algorithm, the field officer, and the supervisor, and any numerical or other scores produced.” (*Id.* at 4.) On information and belief, ICE maintains this data and has released it to third parties in the past.

12. Fifth, the FOIA Request seeks “data tracking transactions related to immigration bonds, including their setting, payment, cancellation and breach.” *Id.* The Burlington Finance Center maintains this information as “part of the Bond Management Information System database.” *Id.* On information and belief, ICE maintains and operates the Bond Management System database.

13. Plaintiff asked ICE for a waiver of document search, review, and duplication fees because “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and [because it] is not primarily in the commercial interest of the requester.” (*Id.* at 9 (citations omitted).) *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). Additionally, Plaintiff’s request for a waiver of search fees emphasized that Plaintiff qualifies as a “representative of the news media” within the meaning of the FOIA. (Ex. A, at 9.) *See* 5 U.S.C. § 552(a)(4)(A)(ii); 6 C.F.R. § 5.11(k).

14. Plaintiff requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(e)(1) because of a compelling and urgent need for these records “to inform the public concerning actual or alleged Federal Government Activity.”

15. Through the FOIA Request, Plaintiff seeks records to help inform the public about the government’s current enforcement policies. Plaintiff has a compelling and urgent need for these records because it seeks to inform the public about new governmental directives regarding removals, detentions, apprehensions, risk classification assessments, and bond management. The aims of increasing detention, eliminating the “catch and release” policy, increasing removals of noncitizens without criminal records, and expanding the use of detainers alter long-standing policies adopted by the Obama administration.¹ This shift in

¹ *See* Tal Kopan & Catherine E. Shoichet, *Key Points in Trump’s Immigration Executive Orders*, CNN (Jan. 26, 2017), <https://www.cnn.com/2017/01/25/politics/donald-trump-immigration-executive-orders/index.html>; Dara Lind, *The Wall Is The Least Aggressive of Trump’s Executive Actions on Immigration*, VOX (Jan. 25, 2018), <https://www.vox.com/2017/1/25/14378474/trump-immigration-order-wall-deport-sanctuary>; *see also* Maria Sacchetti, *ICE Immigration Arrests of Noncriminals Double Under Trump*, WASHINGTON POST (Apr. 16, 2017).

established policies and its attendant effect on immigrants' fundamental liberty interests warrants prompt and immediate review of its bases, interpretation, and implementation.

16. On October 25, 2018, Defendant ICE sent Plaintiff a request for clarification regarding Plaintiff's FOIA Request. Defendant ICE stated that Plaintiff's written request was too broad in scope and advised Plaintiff that most data is saved for a maximum of seven (7) years. Plaintiff responded promptly to the request for additional information and sent ICE a response the same day on October 25, 2018. True and correct copies of Defendant's request for clarification and Plaintiff's response thereto are annexed hereto as Exhibit B.

17. In that response, Plaintiff stated that its understanding was that ICE maintains such electronic data for more than seven (7) years. However, Plaintiff agreed to limit the scope of its request to completions from 7 years before the date of ICE's response to Plaintiff's request. (*See Ex. B.*)

18. After Plaintiff submitted the additional information ICE requested on October 25, 2018, Plaintiff did not receive any response from ICE to the FOIA Request.

19. It has been over 9 months since Plaintiff submitted the supplemental information requested by ICE, but Plaintiff has received no response from ICE and no rejection of the FOIA Request.

20. Plaintiff has exhausted its administrative remedies under 5 U.S.C. § 552, under which ICE has, at most, 20 business days to make a "determination" on Plaintiff's request. *See* 5 U.S.C. § 552(a)(6)(C)(i); *id.* at § 552(a)(6)(A)(i); *id.* at § 552(a)(3); *see also Coleman v. Drug Enforcement Admin.*, 714 F.3d 816, 823 (4th Cir. 2013) ("[I]f an agency does not respond to a request within twenty working days after receiving it, the requester may typically commence litigation.").

21. Defendant failed to respond to Plaintiff's request by November 23, 2018, which was twenty working days after Plaintiff's response to ICE's request for additional information on October 25, 2018, and no exception to the twenty-day response requirement applies here. Thus, Plaintiff has exhausted its administrative remedies.

22. Therefore, Defendant has violated the applicable statutory time limit for the FOIA Request and wrongfully failed to release responsive data and records to Plaintiff.

23. Accordingly, Plaintiff is entitled to file this lawsuit, pursuant to 5 U.S.C. § 552, and seeks enforcement of FOIA by this Court.

FIRST CLAIM

Violation of Freedom of Information Act, 5 U.S.C. § 552, and 6 C.F.R. § 5.6(c) Promulgated Thereunder, for Failure to Timely Disclose Responsive Agency Records

24. Plaintiff repeats, alleges, and incorporates by reference the allegations in paragraphs 1 through 23 as though fully set forth herein.

25. Defendant's unlawful withholding of documents responsive to Plaintiff's FOIA Request violates 5 U.S.C. § 552(a)(3)(A) and 5 U.S.C. § 552(a)(6)(A), as well as 6 C.F.R. § 5.6(c), promulgated thereunder.

26. Defendant is obligated under 5 U.S.C. § 552(a)(3) to produce records responsive to Plaintiff's FOIA Request.

27. Defendant was required to respond to Plaintiff's FOIA Request within 20 business days under 5 U.S.C. § 552(a)(6)(A) and 6 C.F.R. § 5.6(c), promulgated thereunder.

28. No basis exists for Defendant's failure to provide a response to Plaintiff's request. Plaintiff has exhausted its administrative remedies by virtue of Defendant's failure to respond to the FOIA Request.

SECOND CLAIM

**Violation of Freedom of Information Act, 5 U.S.C. § 552,
for Failure to Timely Conduct an Adequate Search of Agency Records**

29. Plaintiff repeats, alleges, and incorporates by reference the allegations in paragraphs 1 through 28 as though fully set forth herein.

30. Plaintiff's FOIA Request seeks records from October 25, 2011 through to present day.

31. Defendant has failed to produce or reproduce any responsive records.

32. ICE is obligated under 5 U.S.C. § 552(a)(3)(C) to conduct a reasonable search for and to produce records responsive to Plaintiff's FOIA Request. Plaintiff has a legal right to obtain such records, and no legal basis exists for ICE's failure to conduct a reasonable search for records through the present date.

33. Defendant's failure to conduct a reasonable search for records responsive to Plaintiff's FOIA Request violates 5 U.S.C. §§ 552(a)(3)(C) and (a)(6)(A), as well as 6 C.F.R. § 5.6(c), promulgated thereunder.

THIRD CLAIM

**Violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(1) & (2),
for Failure to Timely Respond to the Request for Agency Records**

34. Plaintiff repeats, alleges, and incorporates by reference the allegations in paragraphs 1 through 33 as though fully set forth herein.

35. Defendant's failure to timely respond to Plaintiff's FOIA Request for agency records constitutes agency action unlawfully withheld and unreasonably delayed in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1).

36. Additionally, Defendant's failure to timely respond is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against Defendant and that the Court:

- (a) Declare unlawful Defendant's refusal to disclose the records requested;
- (b) Declare that Defendant's failure to make a determination with respect to Plaintiff's FOIA Request within the statutory time limit and Defendant's failure to disclose responsive records violates the FOIA;
- (c) Declare that Defendant's failure to timely respond to Plaintiff's request for agency records violates the Administrative Procedure Act;
- (d) Compel Defendant and any of Defendant's departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendant to conduct a full, adequate, and expeditious search for records responsive to Plaintiff's FOIA Request and to produce any and all such records to Plaintiff;
- (d) Enjoin Defendant, and any of their departments, components, other organizational structures, agents, or other persons acting by, through, for or on behalf of Defendant from withholding non-exempt records responsive to Plaintiff's FOIA Request and order them to promptly produce the same without redaction;
- (e) Award Plaintiff its reasonable attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
- (f) Grant any such other or further relief as the Court deems just and equitable.

Dated: New York, New York
July 29, 2019

Respectfully submitted,

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